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3 | PAPERS RELATIVE TO THE
HUDSON'S BAY COMPANY'S
CHARTER AND LICENCE OF
TRADE. 4 | 1859

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P A P E R S

RELATIVE TO THE

HUDSON'S BAY COMPANY'S CHARTER AND LICENCE OF TRADE.

Presented to both Houses of Parliament by Command of Her Majesty,
April 1859.



LONDON:

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PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY,
FOR HER MAJESTY'S STATIONERY OFFICE.

1859.



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P A P E R S

RELATIVE TO THE

HUDSON'S BAY COMPANY'S CHARTER AND LICENCE OF TRADE.

I.—Despatches from the Governor-General of Canada.

No. 1.

No. 1.

COPY of a DESPATCH from the Right Honourable Sir EDMUND HEAD Bart. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

(No. 106.)

Government House, Toronto, Canada West,
August 16, 1858.

(Received 30th August 1858.)

(Answered No. 102. 22d December 1858, p. 6.)

SIR, I HAVE the honour to enclose a joint Address from the Legislative Council and Assembly of Canada to Her Majesty the Queen on the subject of the territory of the Hudson's Bay Company, which I request may be laid at the foot of the Throne.

I have, &c.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

(Signed) EDMUND HEAD.

Enclosure in No. 1.

Encl. 1 in No. 1.

To the Queen's most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council and Commons of Canada in Provincial Parliament assembled, humbly approach Your Majesty for the purpose of representing—

THAT the approaching termination of the Licence of Trade granted by Your Majesty's Imperial Government to the Hudson's Bay Company over the Indian territories, a portion of which, in our humble opinion, Canada has a right to claim as forming part of Her territory, renders imperative the adoption of such measures as may be necessary to give effect to the rights of the province, and presents a favourable opportunity for obtaining a final decision on the validity of the Charter of the Company, and the boundary of Canada on the north and west.

That Canada, whose rights stand affected by that Charter, to which she was not a party, and the validity of which has been questioned for more than a century and a half, has, in our humble opinion, a right to request from Your Majesty's Imperial Government a decision of this question, with a view of putting an end to discussions and questions of conflicting rights, prejudicial as well to Your Majesty's Imperial Government as to Canada, and which while unsettled must prevent the colonization of the country.

That the settlement of the boundary line is immediately required, and that therefore we humbly pray Your Majesty that the subject thereof may be forthwith submitted for the opinion of the Judicial Committee of Your Majesty's Privy Council, but without restriction as to any question Canada may deem it proper to present on the validity of the said Charter or for the maintenance of her rights.

That any renewal of the licence to trade over the Indian territories should, in our humble opinion, be granted only upon the conditions that such portions thereof, or of the other territories claimed by the Company (even if their Charter be held valid), as may be required from time to time to be set apart by Canada or by Your Majesty's Government into settlements for colonization, should, as so required, be withdrawn from under any such licence and the jurisdiction and control of the said Company, and that Your Majesty's Government, or the Governor-General in Council, should be permitted to grant licences to trade in any portions of the said territories while held by or in occupation of the said Company, upon such conditions for the observance of law and the preservation of the peace, for the prohibition or restriction of the sale of ardent spirits, for the protection of Indian tribes from injury or imposition, and with such other provisions as to Your Majesty's Government or to His Excellency in Council may seem advisable.

That, in our humble opinion, Canada should not be called upon to compensate the said Company for any portion of such territory from which they may withdraw or be compelled to withdraw, but that the

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said Company should be allowed to retain and dispose of any portion of the lands thereof on which they have built or improved.

All which we humbly pray Your Majesty to take into Your Majesty's gracious and favourable consideration.

(Signed) N. F. BELLEAU,
Speaker, L.C.

(Signed) HENRY SMITH,
Speaker, L.A.

Legislative Council, Toronto, 14th August 1858.

Legislative Assembly Hall, Toronto, 13th August 1858.

No. 2.

No. 2.

Copy of a DESPATCH from the Right Honourable Sir EDMUND HEAD Bart. to
Right Honourable Sir EDWARD BULWER LYTTON Bart.

(No. 117.)

Quebec, Sept 9, 1858

(Received 22d September 1858)

SIR,

I HAVE the honour to enclose a copy of a minute of the Executive Council of Canada, approved by myself this day, respecting the joint Address of both Houses of the Provincial Legislature on the subject of the Hudson's Bay territory, and the questions connected therewith.

I fully concur with my Council in the importance of this matter, and would present for consideration on Her Majesty's Government.

I have, &c.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

(Signed) EDMUND HEAD

Encl. in No. 2.

Enclosure in No. 2.

Copy of a REPORT of a Committee of the Honourable the Executive Council, dated the 4th September 1858, approved by His Excellency the Governor-General in Council on the 9th September 1858.

THE Committee of Council respectfully recommend that the Resolutions passed by the Legislative Council and the Legislative Assembly, and the joint Address thereon of both Houses, on the subject of the Hudson's Bay Territory, be urged upon the attention of the Imperial Government by members of the Executive Council as may be in London during this present autumn, and that, at the same time, the importance of opening a direct line of communication by railway, or otherwise, between Canada, through the Red River and Saskatchewan territories, to Fraser's River and Vancouver's Island, be brought by them under the notice of the Imperial authorities.

(A true copy.)

(Signed) EDMUND HEAD

No. 3.

No. 3.

Copy of a DESPATCH from the Right Honourable Sir EDMUND HEAD Bart. to
Right Honourable Sir EDWARD BULWER LYTTON Bart.

(No. 16.)

Government House, Toronto, Canada West
January 29, 1859.

(Received 15th February 1859.)

SIR,

I LAID your despatch of December 22, No. 102,* relating to the question of the Hudson's Bay Company before my Council.

The Council are fully sensible of the consideration shown by Her Majesty's Admonition for the interests of Canada, and they are anxious to do all they can to bring the matter to a speedy settlement. They think, however, as Parliament is on the point of assembling, and as the matter was under the consideration of that body in their last session, that they ought not to give a final answer as to the course which they will pursue until they have had an opportunity of submitting so important a subject to the Legislature.

I trust sincerely that I shall be able speedily to communicate to you the determination of the Canadian Government.

I have, &c.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

(Signed) EDMUND HEAD

* Page 6.

No. 4.

No. 4.

Copy of a DESPATCH from the Right Honourable Sir EDMUND HEAD Bart. to the
Right Honourable Sir EDWARD BULWER LYTTON Bart.

(No. 44.)

Government House, Toronto, Canada West,

April 4, 1859.

(Received 19th April 1859.)

Sir,

I REGRET very much that I have not been able before this to send any definite
reply to your despatches (the dates and numbers of which are marked in the margin)
relating to the Charter of the Hudson's Bay Company.

The first of these despatches was laid before my Council on the 11th of January, and
I have repeatedly pressed the members of that body for their formal opinion on this
important matter. They have frequently discussed the subject, and I fully admit that it
is one which requires careful consideration.

I am now for the first time able to inform you that the Executive Council will not
advise steps to be taken for testing the validity of the Charter by "scire facias," but
they are strongly of opinion that it is most desirable on all accounts that the boundaries
of Canada should be accurately and speedily defined.

It is probable that the Hudson's Bay territory will again form the subject of discussion
by the Provincial Parliament in the course of the present session.

I have, &c.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

(Signed) EDMUND HEAD.

No. 102,
Dec. 22, 1858,
page 6.
No. 25,
Feb. 11, 1859,
page 6.
No. 37,
Mar. 10, 1859,
page 7.
No. 43,
Mar. 18, 1859,
page 7.

II.—Despatches from the Secretary of State to the Governor General of Canada.

No. 1.

No. 1.

COPY of a DESPATCH from the Right Honourable Sir EDWARD BULWER LYTTON Bart.
to the Right Honourable Sir EDMUND HEAD Bart.

(No. 79.)

SIR,

Downing Street, October 26, 1858.

* Page 4.

I HAVE to acknowledge the receipt of your despatch, No. 117,* of the 9th September, enclosing the copy of a Minute of the Executive Council of Canada respecting the joint Address of both Houses of the Provincial Legislature relative to the Hudson's Bay territory, and the questions connected therewith.

This important subject will not fail to receive the careful consideration of Her Majesty's Government.

I have, &c.

The Right Hon. Sir E. Head, Bart.

(Signed) E. B. LYTTON.

&c. &c. &c.

No. 2.

No. 2.

COPY of a DESPATCH from the Right Honourable Sir EDWARD BULWER LYTTON Bart.
to the Right Honourable Sir EDMUND HEAD Bart.

(No. 102.)

SIR,

Downing Street, December 22, 1858.

* Page 3.

I DULY received your despatch, No. 106,* of the 16th August last, and laid before the Queen the joint Address to Her Majesty which accompanied it from the Legislative Council and Assembly of Canada, relative to the territory of the Hudson's Bay Company.

The subject of this Address has occupied my careful consideration, and I transmit you the copies of a correspondence respecting it which has taken place between the Company and this Department. From this correspondence, you will perceive that the Hudson's Bay Company decline to be consenting parties to a reference of questions respecting the validity or extent of their Charter to the Judicial Committee of the Privy Council; and, under these circumstances, the law advisers of the Crown, whom I have consulted in the matter, have stated, in an opinion of which I forward a copy, that the only course open for the determination of these questions is by writ of *scire facias* brought to repeal the Charter.

I have, therefore, to request that you will submit the accompanying papers to your Government, and invite them to take steps to obtain the writ, in accordance with the suggestion of the law advisers, and that you will inform me, as soon as practicable, the course which the Government of Canada may resolve to adopt in this matter. Parliament will doubtless meet in the first week of February, and I need not say how desirable it would be if Her Majesty's Government could then be prepared to notify the decision of Canada.

—I have, &c.

The Right Hon. Sir E. Head, Bart.

(Signed) E. B. LYTTON.

&c. &c. &c.

No. 3.

No. 3.

COPY of a DESPATCH from the Right Honourable Sir EDWARD BULWER LYTTON Bart.
to the Right Honourable Sir EDMUND HEAD Bart.

(No. 25.)

SIR,

Downing Street, February 11, 1859.

IN the course of the interviews which passed between Messrs. Cartier, Ross, Galt, and myself, during the visit of those gentlemen to this country in October last, it was understood from them that it was the intention of the Government of Canada

Company,
12th Oct. 1858,
page 15.

Colonial Office,
3d Nov. 1858,
page 25.

Company,
10th Nov. 1858,
page 15.

undertake legal proceedings in this country against the Hudson's Bay Company, if that Company should refuse to allow the validity of their Charter to be tested by agreement before the Judicial Committee of the Privy Council.

It was in consequence of this understanding that I addressed to you my despatch of 22d December last, informing you of their refusal.

It was my hope that I should receive an answer to that despatch, expressing in definitive terms the resolution arrived at by the Canadian Government, before the meeting of the Imperial Parliament; and it now becomes necessary that I should press on you the importance of my receiving such an answer immediately, in order that Her Majesty's Government may determine on the course to be taken by themselves.

I have, &c.

The Right Hon. Sir E. Head, Bart.
&c. &c. &c.

(Signed) E. B. LYTTON.

No. 4.

No. 4.

COPY of a DESPATCH from the Right Honourable Sir EDWARD BULWER LYTTON Bart. to the Right Honourable Sir EDMUND HEAD Bart.

(No. 37.)

Sir,

Downing Street, March 10, 1859.

WITH reference to former correspondence on the subject of the affairs of the Hudson's Bay Company, I now transmit to you copy of a farther correspondence which has taken place between this Department and the Governor and Committee of that Company, on the subject of the approaching expiration of their trading licence in North Western America, you will observe that, as that licence expires in May next, Her Majesty's Government could not avoid entertaining the question, although they would have preferred waiting for the decision of the Canadian Government as to trying the validity of the Charter, in order that the whole subject might be disposed of together.

With respect to this latter question, it is impossible for Her Majesty's Government to allow the present session of parliament to pass by without endeavouring to use it for the settlement of pending questions. I have, therefore, to add, that unless I receive by the first of May next the decision of the Canadian Government and Legislature, whether they will or will not contest the validity of the Charter, Her Majesty's Government must proceed, though with reluctance, to take such steps as to the Charter territory, whether in the way of negotiation, legislation, or legal proceedings, as they may be advised. Ample care will, however, be taken, in any case, to reserve and protect whatever claims of right Canada may hereafter establish.

I have, &c.

The Right Hon. Sir E. Head, Bart.
&c. &c. &c.

(Signed) E. B. LYTTON.

No. 5.

No. 5.

COPY of a DESPATCH from the Right Honourable Sir EDWARD BULWER LYTTON Bart. to the Right Honourable Sir EDMUND HEAD Bart.

(No. 43.)

Sir,

Downing Street, March 18, 1859.

WITH reference to former correspondence on the subject of the affairs of the Hudson's Bay Company, I have now to inform you that the Governor and Directors have finally declined the proposal made to them by Her Majesty's Government on public grounds, of an extension of their licence for two years (instead of one as originally offered). The correspondence shall be transmitted to you by next mail, as there is not time for the present.

In May next, therefore, the licence will expire, and Her Majesty's Government have now under consideration the steps which it may be necessary to take in consequence of that expiration.

You cannot fail to observe that this circumstance renders the disposal of the pending questions relative to the Charter of even more urgent necessity than it was before. The question as to the future management of the licence territories and of the Charter

C.O. 28th Jan.
1859, page 22.
H.B. Co.
2d Feb. 1859,
page 13.
H. B. Co.
8th Feb. 1859,
page 13.
C.O. 9th Mar.
1859, page 23.

territories being so closely connected, it becomes even more essential that I should have the immediate answer of your Government, whether it is their intention or not to try the validity of the Charter by *scire facias*, and if such is their intention, whether they will at once either send a delegate or in any other manner initiate the necessary proceedings.

I have, &c.
(Signed) E. B. LYTTON.

The Right Hon. Sir E. Head, Bart.
&c. &c. &c.

No. 6.

No. 6.

Copy of a DESPATCH from the Right Hon. Sir EDWARD BULWER LYTTON Bart. to the Right Honourable Sir EDMUND HEAD Bart.

(No. 51.)

Sir,

Downing Street, 1st April 1859

* Page 7.
15th Mar. 1859,
page 17.

WITH reference to my despatch, No. 43,* of the 18th March, relative to the affairs of the Hudson's Bay Company, I transmit to you herewith copy of the letter from the Company declining the extension of their licence for two years. This letter completes the correspondence with the Company to the present date.

I have &c.
(Signed) H. MERIVALE.
(In the absence of the Secretary of State.)

The Right Hon. Sir E. Head, Bart.
&c. &c. &c.

III.—Letters from the Hudson's Bay Company.

No. 1.

No. 1.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

Sir, Hudson's Bay House, July 27, 1858.
 REFERRING to the conversation Captain Shepherd and I had the honour of holding with you yesterday at the Colonial Office, from which I gathered that you were of opinion that it would be necessary to take the opinion of the law officers of Her Majesty's present Government upon the best mode of ascertaining the validity of the Charter of the Hudson's Bay Company, I hope that it will not be considered presuming if I request that before any such case be submitted for the opinion of the Law Officers of the Crown you will be good enough to afford the Company an opportunity of perusing it, as we are desirous, if possible, of co-operating with Her Majesty's Government in this matter.

The Right Hon. Sir E. B. Lytton, Bart. I have, &c.
 &c. &c. &c. (Signed) H. H. BERENS,
 Deputy Governor.

No. 2.

No. 2.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

Sir, Hudson's Bay House, London, August 6, 1858.
 I HAVE the honour to acknowledge receipt of the Earl of Carnarvon's letter of the 5th instant,* in compliance with which I have announced to my colleagues in the direction the intention of Her Majesty's Government to revoke the right of exclusive trade with the Indians which was given to the Company in the Royal Licence of the 30th May 1838, over so much of the territory in question as is comprised within the Colony of British Columbia.

I have also the honour of enclosing an extract of a letter addressed to Governor Douglas, under date the 16th of July last, from which you will perceive that the wishes of Her Majesty's Government upon this point have already been anticipated to a certain extent by the Hudson's Bay Company, in a manner which you will doubtless approve.

The Right Hon. Sir E. B. Lytton, Bart. I have, &c.
 &c. &c. &c. (Signed) H. H. BERENS,
 Deputy-Governor.

Enclosure in No. 2.

Encl. in No. 2.

EXTRACT of a LETTER from W. G. SMITH Esquire, Secretary, Hudson's Bay Company, to JAMES DOUGLAS Esquire, Governor of Vancouver's Island, dated London, 16th July 1858.

By the Despatch from the Colonial Office dated the 1st instant, to which I referred in my letter of last week, you will see that it is the wish of Her Majesty's Government that free access be allowed to all nations to search for gold in Fraser's River, while by the Bill providing for the government of New Caledonia (which will doubtless become law ere you receive this) all the exclusive privileges of the Hudson's Bay Company will, so far as that district is concerned, be at an end. You will bear in mind that although the Company have equal rights of trade within that district with others of Her Majesty's subjects, yet that no claim for exclusive privileges can now be maintained there.

The Governor and Committee presume that you will receive from Her Majesty's Government definite instructions for your guidance, and they rely upon your using your best endeavours to carry them into effect.

No. 3.

No. 3.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR,

Hudson's Bay House, August 12, 1858.

* Page 19.

I HAVE the honour to acknowledge the receipt of Mr. Merivale's letter of the 4th instant,* in which he informs me, that although you do not think it would be expedient or consistent with the usual proceedings of Her Majesty Government, in consulting their own legal advisers, that a copy or draft of the letter to be laid before those gentlemen as to the steps to be taken to try the validity of the claims of the Hudson's Bay Company in North America should be communicated to me for the purpose of being laid before the Company, yet that you are willing that the letter, when prepared, should be shown to me before being sent.

In venturing to request that the document in question should be communicated to me my sole object was that the Government and the Committee should act in concert, and should understand each other as to the precise nature of the question upon which Counsels' opinion was to be taken. The idea of laying the case "before the Company" never once occurred to me, and the utmost I wished was that my colleagues in the direction, as well as myself, should have an opportunity of seeing so important a document before a legal opinion was taken upon it.

I do not know if your objections extend so far as not to permit my co-directors, as well as myself, to see the letter; if it does, I shall not press the matter any further; but in that case I shall gladly avail myself of the opportunity which Mr. Merivale informs me you are ready to afford me, to see the letter before it is submitted to the law advisers of the Crown.

I shall feel obliged if you will give directions so that notice may be sent to me at what time I may have an opportunity of perusing the document.

I have, &c.

(Signed) H. H. BERENS,
Deputy-Governor.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

No. 4.

No. 4.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR,

Hudson's Bay House, September 7, 1858.

† Page 19.

I HAVE the honour to acknowledge the receipt of Mr. Merivale's letter of the 3d instant,† transmitting, for the information of the Hudson's Bay Company, and for any observations they may have to offer, the copy of a joint Address sent to the Queen by the Legislative Council and Assembly of Canada on the subject of the Company's territorial and other rights.

In thanking you for this communication, I have to state that the Committee of the Company having temporarily adjourned, several of my colleagues in the direction have availed themselves of the opportunity of leaving London; but I shall take the earliest occasion, on their re-assembling, of submitting the document in question to the consideration of the Board, and we shall thereafter lose no time in communicating any observations upon the subject which we may think it desirable to submit to you.

I have, &c.

(Signed) H. H. BERENS,
Deputy-Governor.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

No. 5.

No. 5.

COPY of a LETTER from THOMAS FRASER Esq. to HERMAN MERIVALE Esq.

SIR, Hudson's Bay House, London, September, 15, 1858.
In the absence of the Deputy-Governor of the Hudson's Bay Company, I have the honour of acknowledging the receipt of your letter to him of the 9th instant,* enclosing a copy of the instrument under the Royal Sign Manual revoking the Royal Grant to the Hudson's Bay Company of the 30th May 1838, for exclusive trading with the Indians, in as far as the same embraces the territories comprised within the colony of British Columbia.

* Page 20

Herman Merivale, Esq.
&c. &c.

I have, &c.
(Signed) THOMAS FRASER,
Secretary.

No. 6.

No. 6.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR, Hudson's Bay House, October 12, 1858.
WITH reference to a communication addressed to me under date the 3d ultimo,† the receipt of which I had the honour to acknowledge on the 7th of that month, I beg now to state that the Company can only re-assert their right to the privileges granted to them by their Charter of Incorporation, the extent and nature of which they have already fully explained in the papers which will be found amongst those printed by order of Parliament. I refer particularly to a letter addressed by Sir J. Henry Pelly, to Earl Grey, dated 13th September 1849,† enclosing a paper entitled "Statement of the Rights as to the territory, trade, taxation, and government claimed and exercised by the Hudson's Bay Company on the Continent of North America," and marked No. 2 among the papers on the affairs of the Hudson's Bay Company, printed by order of the House of Commons on the 12th July, 1850.

† Page 19.

† Vide House of Commons Paper No. 542, Session 1850, p. 3.

This Company cannot therefore be a consenting party to any proceeding which is to call in question rights so long established and recognized; but they will of course be prepared to protect themselves against any attempt that may be made on the part of the Canadian Authorities to deprive them, without compensation, of any portion of the territory they have so long been in possession of.

I have, &c.
(Signed) H. H. BERENS,
Deputy Governor.
The Right Hon. Sir E. B. Lytton, Bart,
&c. &c. &c.

No. 7.

No. 7.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR, Hudson's Bay House, November 10, 1858.
I HAVE the honour to acknowledge the receipt of Lord Carnarvon's letter of the 3d instant,§ to which I now beg to reply, as I am anxious that the views and intentions of this Company should not be misunderstood.

§ Page 21.

In the year 1850|| a correspondence passed between the Colonial Office and this Company, in reference to the objections raised by certain parties in regard to the validity of the rights claimed by this Company under their Charter, and under date the 24th January 1850 Mr. B. Hawes, by desire of Lord Grey, transmitted to Sir J. H. Pelly, the then Governor of this Company, a copy of a letter proposed to be addressed by his Lordship, to Mr. Isbister, the person bringing forward the complaints referred to. In answer to that communication, the Secretary of this Company, under date the 29th January 1850,

|| Vide House of Commons Papers No. 542, Session 1850, p. 8.

stated that there was nothing in the letter so proposed to be addressed to Mr. Isbister to which the Directors of the Company had the least objection.

At that period the consent of this Company was not asked; and the Law Officers of the Crown stated as their opinion that the proper mode for raising the question for discussion would be to embody in a petition to the Queen any complaints urged against the Company, and they recommended that any such petition should be referred by Her Majesty to the Judicial Committee of the Privy Council. On that occasion it was distinctly stated that the petition must be confined to the subject to which the resolution of the House of Commons of the 5th July 1849 extended,—that subject being an inquiry into the legality of certain powers claimed and exercised by the Hudson's Bay Company, under their Charter, but not questioning the validity of the Charter itself.

No petition, however, was then presented, and there the matter rested until the year 1857, when a Select Committee of the House of Commons was appointed "to consider the state of the British Possessions in North America under the administration of the Hudson's Bay Company, or over which they possessed a licence to trade."

In the month of July 1857 a communication was made to this Company by Mr. Labouchere, the then Secretary of State for the Colonies, calling the attention of the Company to a statement received from the Law Officers of the Crown, having reference solely to the question of the geographical extent of the territory claimed by this Company as included in the grant by their Charter, recommending that the subject should be referred to the Privy Council and stating that this could not be done, except by the consent of both parties, namely, Canada and this Company. In reply to this communication, the Governor of the Company informed Mr. Labouchere under date the 18th July 1857, that the Directors of this Company would be prepared to recommend to their Shareholders to concur in the course suggested.

The suggestion now made to the Company, as set forth in the address to Her Majesty from the Canadian Legislature, and to which my letter of the 12th ultimo had reference is that they should give their consent to an inquiry before the Judicial Committee of the Privy Council, which inquiry is to involve, not merely the question of the geographical boundary of the territories claimed by them, but to challenge also the validity of the Charter, and, as a consequence, all the rights and privileges which it professes to grant, and which have been exercised by the Company for a period of nearly 200 years.

If such an inquiry should be gone into in the manner suggested by the Law Officers of the Crown in 1850, the Company will now, as it was then, be prepared to appear at that inquiry in support of their rights, but in that event no consent on their part will be necessary, nor, as I have already observed, was any consent asked for or suggested when the former inquiry was contemplated. But if the validity of their Charter itself is to be called in question, the Committee feel that in justice to their Shareholders it would be impossible for them to be consenting parties to proceedings instituted with such an object.

The Company has at all times been willing to entertain any proposal that might be made to them for the surrender of any of their rights or of any portion of their territory; but it is one thing to consent, for a consideration to be agreed upon, to the surrender of admitted rights, and another to volunteer a consent to an inquiry to call those rights in question.

While, therefore, I and my colleagues in the Direction of the Hudson's Bay Company are anxious to do all that we can, consistently with our duty to our Shareholders, to meet the wishes both of Her Majesty's Government and of the Canadian Legislature, we feel that we cannot return any answer to your letter of the 3d instant* than that which is conveyed by the letter on the same subject which I had the honour of addressing to you on the 12th ultimo.†

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

I have, &c.
(Signed) H. H. BERENS,
Deputy-Governor

No. 8.

No. 8.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR, Hudson's Bay House, London, February 2, 1859.
I HAVE the honour to acknowledge the receipt of the Earl of Carnarvon's letter of the 28th ultimo,* informing me that Her Majesty's Government are not prepared to grant to this Company a renewal for a term of years of the licence of exclusive trade over the Indian territory, but that they are prepared to grant a fresh licence for one year, commencing from the expiry of the present licence.

* Page 22.

The subject being one of deep importance, and requiring the consideration of the full Board, the Directors now in London feel that in the absence of the Deputy-Governor, who is in Scotland, but who is expected to arrive in London to-morrow, they ought to postpone coming to a decision until they have been able to consult with him. I have, however, called a special meeting of the Committee for Friday next, when the subject will be fully considered, and on Saturday I hope to have the honour of transmitting to you the result of their deliberations.

I have, &c.

(Signed) H. H. BERENS,
Governor.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

No. 9.

No. 9.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR, Hudson's Bay House, London, February 8, 1859.
WITH reference to my letter of the 2d instant, I have now the honour to inform you, that I have this day laid before the Board of Directors of the Hudson's Bay Company the letter addressed to me by Lord Carnarvon on the 28th ultimo. His Lordship, by your directions, therein informs me, that Her Majesty's Government "are not prepared to grant to the Company a renewal of the licence under the Act of 1st & 2nd Geo. 4th, Cap. 66., but, regard being had to the expiration of the present licence in May next, and the injury to the public interests in the regions comprised in the licence which might in the present state of things arise from its termination at that date, Her Majesty's Government are willing to grant to the Hudson's Bay Company a fresh licence for one year, to commence from the expiry of the present licence."

The Board direct me respectfully to decline that offer. The acceptance on their part of the licence for any period of shorter duration than that which has been usually granted since the passing of the Act above mentioned would, in their opinion, only further increase the inconveniences resulting from the state of suspense in which the question has been kept for the last two years. So far from strengthening it would paralyze their authority even within their own territory, from the impression it would create of the approaching termination of that authority. They do not require and never have applied for the licence for the purposes of their trade. The Act passed at their suggestion in 1821 was intended for the preservation and maintenance of peace and order in the whole of the Indian territories. These had been grievously compromised by conflicts of the servants of rival traders, whose interests were about that time united. No means are provided in the Act for the enforcement of its provisions, so as to give additional protection to the trade. The intelligence of the renewal of the licence for a year would not even reach a large portion of the posts of the Company before that period had expired.

The Board beg respectfully again to bring under your review the whole of the correspondence and proceedings which have had reference to this subject since their first application, dated 22d December 1856, for a renewal of the licence.

In consequence of that application, and of the approaching period of the expiration of the existing licence, the late Secretary of State for the Colonies, Mr. Labouchere, referred the matter to the consideration of a Committee of the House of Commons. Much evidence was taken before that Committee. The board, through the medium of their late Chairman, Mr. Shepherd, communicated fully their opinions and intentions with respect to the past and future interests of the Hudson's Bay Company, in a letter

Enclosure.

to Mr. Labouchere, dated the 18th July 1857, which was laid before that Committee. For fear that that letter may have escaped your recollection, they think it essential at this moment to transmit a copy of it for your information. No change has taken place in the situation of the Company, nor in any circumstances connected with their affairs, to induce the Directors to change in any respect the course which they then announced to Her Majesty's Government it was their intention to pursue; nor have they at any time, in any subsequent communication, departed or intended in any respect to depart from the principles on which they then intended and still intend to act.

The Board were then as much aware as they are now of the unpopularity attaching to the existence of the monopoly. That consideration made it more essential that they should weigh with the greatest caution every step in their proceedings which might entail further personal responsibility upon them. No monopoly can be upheld on any ground short of a conviction of its necessity, as the best, if not the only means of accomplishing some exceptional object. The Board have therefore entreated that the Government might in the first instance decide the question of the maintenance or abolition of the monopoly, either for the present, or for any future purposes for which it may be required. If better means can be devised for maintaining order and peace in the Indian country, and for the protection of the Indian tribes from the evils which have hitherto been found inseparable from competition in the trade, as well as for the colonization and agricultural improvement of the territory, the question of the abolition of the Hudson's Bay Company should only be one of just indemnity to the shareholders for their legal rights and interests.

If, on the other hand, it should be found impossible to devise better means for the government of the country, the hands of the Directors should be strengthened, to enable them to fulfil the public purposes for which their services have been considered efficient and satisfactory for the last 40 years. Any diminution of the confidence and support they have hitherto received from the Government, or even any appearance of it, would weaken their power both with Indians and settlers in the country. The above course would not be inconsistent with any extension of colonization or settlement which either Her Majesty's Government or the Government of Canada can have in view in that part of Her Majesty's dominions now possessed or occupied by the Company, or with the accomplishment of all the objects recommended in the report of the Committee of the House of Commons.

* Page 21.

The Board lamented to see and have hitherto abstained from adverting to some expressions in your letter of the 3d November* last, imputing to them unreasonable conduct in not accepting some terms of compromise which it is alleged had been offered to them. In that letter it is stated "that you entertain an anxious desire to come to some equitable and conciliatory arrangement by which all equitable claims of the Hudson's Bay Company should be fairly considered in reference to the privileges they may be required to surrender."

† Vide House of Commons Papers No. 99, Session 1858, p. 3.

* Page 19.

† Page 21.

Only two propositions have been made to the Board. The first in a letter from Mr. Merivale, under date the 20th January 1858,† by which it was proposed to refer the question of the Company's boundaries to the Judicial Committee of the Privy Council, but distinctly stating that Her Majesty's Government, on public grounds, did not consider themselves authorized to raise the question of the validity of the Charter itself, and that if any parties in Canada proposed to take measures for that purpose Her Majesty's Government must leave them to take that course on their own responsibility. To the proposition the Board gave their unhesitating consent. The other proposition to the Company, which was conveyed by your letter of the 3d September 1858*, and subsequently by that of the 3d November† following, was to the effect that this Company should voluntarily concur in some inquiry having for its object to raise the question of the validity of their Charter, and should give facilities for that purpose; the altogether repudiating the proposition previously received from Her Majesty's Government, and seeking to do the very thing to which, on public grounds, the Government had previously declined to be a party. This latter proposition, therefore, the Directors could not, in justice to their constituents, for one moment entertain, and they confidently appeal to all their previous communications with Her Majesty's Government as justifying that refusal.

Both the present Directors and their predecessors, in the management of the affairs of the Company, have been advised by lawyers of the first eminence and authority that the grant of their land and territories by the Crown was indisputable and inviolable. As trustees they should feel as little justified in consenting to a reference of their proprietary rights of their shareholders as in gratuitously disposing of their property. The conviction of the Directors of the firm position on which they stand has not been

taken by the opinions of the late Attorney and Solicitor-General laid before the Committee. The Board have heard of no other propositions, and certainly of no conciliatory arrangement by which the equitable claims of the Hudson's Bay Company may be fairly considered in reference to the privileges they may be required to surrender."

But the Hudson's Bay Company have invariably expressed their readiness to comply with the conditions on which the Committee of the House of Commons recommended the renewal of the licence. They are most willing to cede, immediately or gradually, if they may be wanted, for the purposes of actual settlement, portions of their territories in the Red River or Saskatchewan, which may be available for cultivation and settlement, on "equitable principles." They are ready to leave those principles to the decision of Commissioners to be indifferently appointed. They are willing, if it is considered desirable, to remain in temporary possession of those parts of the territories until adequate arrangements shall be made for their settlement and administration by some other authority, and to concede in the mean time lands to settlers on such terms as may be recommended by Her Majesty's Secretary of State, and in any other way to assist Her Majesty's Government in such ulterior views as they may entertain, whether for the purpose of establishing those territories as an independent colony, or of placing them under the Government of Canada.

The Hudson's Bay Company have done what was in their power to promote settlement in such parts of their land as appeared to them most suitable for agricultural improvement. They have been careful, at the same time, not to involve the capital of the shareholders in hopeless speculations of this description. Their principal object has certainly been the fur trade of the country. They made a grant to Lord Selkirk, who established the agricultural settlement of the Red River, and made arrangements with the Puget Sound Company for the same purpose on the territories beyond the Rocky Mountains.

When the disorders and troubles broke out in the Red River country which led to the union of the North West and Hudson's Bay Companies, and to the passing of the Act under which the licence of trade was granted, it was thought better to put an end to separate interests, so that the administration both of colony and trade might be conducted under one authority. The Hudson's Bay Company then re-purchased the Red River settlement, and have since endeavoured to encourage and protect settlers in it; but, owing to the circumstances of the country, the inclemency of the climate, the remoteness of markets, and the difficulty of communication, they acknowledge that their efforts have been attended with but little success.

After the notice given to them of your letter of the 3d November, of the intention wholly to withdraw the licence, the Board had taken measures to adapt the administration of their affairs to the altered circumstances in which they would then be placed. They had decided to diminish their establishments in Canada, and to bring their expenditure within the strict limits required by their trade. Further arrangements of this description will become necessary if the colony on the Red River is no longer to be dependent on their ships and means of conveyance for supplies.

If, however, the Secretary of State sees fit to reconsider his decision to withdraw the licence, the Board will willingly endeavour to concur in any measures by which the lands of the Government may remain unfettered with respect to any policy which changes in America might hereafter recommend; and the credit and authority of the Company might at the same time be maintained.

For fear of further misunderstanding on that point, they think it right to protect themselves, in a suggestion they would respectfully make to Her Majesty's Government, from any supposition that they still desired the renewal of the licence for the purposes of their trade. It is certainly very essential that there should be no interval between the cessation of their authority and the substitution of some other, to prevent or regulate, as far as that may be possible, the interference of strangers with the Indian tribes, and the renewal of the disorders for the prevention of which the Act of 1 & 2 Geo. 4. cap. 66 was passed. The suggestion they would submit to your consideration is, that the licence might be renewed to the Hudson's Bay Company for the usual period of 21 years, with a reservation of power to the Crown to withdraw it at any time, on a notice of two years. They make this suggestion to show their disposition to assist the Government in the difficulties which they are fully aware beset this question. But the Board direct me to repeat, that they cannot undertake the responsibility of remaining charged with the care of order and peace in the Indian country under the temporary grant of a licence, which would almost carry with it an acknowledgment of the doubts which have

been thrown upon their rights, and convey an impression of the weakness and willing submission of the Board to the clamour by which their administration had so unjustly been assailed.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

I have, &c.
(Signed) H. H. BERENS,
Governor.

Enclosure in No. 9.

LETTER from the CHAIRMAN of the Hudson's Bay Company to the Right Honourable H. LABOUCHERE, M.P.

SIR,

Encl. in No. 9.

I HAVE the honour to acknowledge the receipt of your letter of the 15th instant, communicating a passage from the statement you have received from the Law Officers of the Crown, in reference to the question of the geographical extent of the territory granted by the Charter of the Hudson's Bay Company, and suggesting that such question might, with great utility, as between the Company and Canada, be made the subject of a quasi-judicial inquiry, and desiring to be informed whether I think it probable that the Hudson's Bay Company would consent to appear before the Judicial Committee of the Privy Council in the manner and for the purpose suggested.

I have submitted this communication to my colleagues, the Directors of the Hudson's Bay Company, and as we are desirous to throw no obstacle in the way of settlement of the doubts that have been raised by the people of Canada as to the extent of the territory to which the Company are entitled under their Charter, we shall be prepared to recommend to our shareholders to concur in the course suggested. At the same time you will not fail to see that other interests than those of the Company may be involved in the inquiry, as there are many persons, not now members of the Company, who have acquired, by grants from the Company or otherwise, a title to large portions of the land in question.

Assuming, however, that the object of the proposed inquiry is to obtain for Canada land fit for cultivation and the establishment of agricultural settlers, I would observe, that the Directors are already prepared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cessions would be a matter of no difficulty between Her Majesty's Government and the Company.

The Board, having in view the present condition of the inquiry before the Committee of the House of Commons, and the agitation which prevails on the question in Canada, are desirous of availing themselves of the opportunity your letter affords to state clearly for your information the principles which will guide them in their future proceedings.

The Board will be ready to bow to any decision which Her Majesty's Government may consider it for the public interests to take with regard to the maintenance or abolition of the exception of rights and trade of the Hudson's Bay Company, relying confidently on the justice of Her Majesty's Government and of Parliament for just compensation to the present stockholders, and a due consideration of the claims of their factors, traders, and servants in the Indian country, if the time shall have arrived, in the opinion of Her Majesty's Government, for the abolition of the monopoly.

The present holders of the capital of the Company 274 in number, are of the usual class of persons holding stock in other chartered companies, who have invested their money on the faith of the Company's Charter, and in confidence of the permanent character of their rights and property, and are in general indifferent to any other question in the present discussion than the security of their capital and dividends.

The situation of the factors, traders, and servants of the Company is described in the evidence taken before the Committee. As no change in the condition or settlement of the country could well be carried into effect without their willing co-operation and assistance, their just claims must be considered in any new arrangements to be submitted to Parliament.

As respects the Board of Directors, of which I have the honour to be Chairman, their situation is peculiar, and their future conduct must be guided by the disposition of Her Majesty's Government to support them in the future administration of their affairs. They have been rewarded so far, since the union of the Hudson's Bay and North West Companies, by the success of their administration as proved, not alone by the results of their trade, but by the condition in which they will leave them now retire, the government of the whole Indian territories intrusted to their care, as well as by the expressed approbation of every succeeding Secretary of State for the Colonies for the last thirty-seven years.

Looking to the future, they will only consent to undertake the further charge of the Indian territories which would devolve upon them on the renewal of the licence, on the faith of being firmly supported by Her Majesty's Government in maintaining their present establishments in efficiency. It would be inexpedient, in their opinion, to enter upon a new and further term of the administration without the fullest and most explicit assurance of that support. The Directors have always considered that the settlement of 1821 was sanctioned by the Government and the Legislature, and the monopoly of the Hudson's Bay Company, then re-established and extended, quite as much, if not more, as the best instrument the Government could employ for the administration, security, and peace of the Indian country, as for the advantage of the parties whose interests were united by that settlement. These parties and these interests have been long since replaced by others, and are now represented by the present holders of the stock of the Company.

We do not consider any further legislative measures necessary at present for the government of the Indian territories. The powers under the Charter have hitherto proved sufficient for the

ordinary purposes of administration; and the Government have full powers, under the Act of 1821, to appoint justices and establish courts, independent of the Company, when and where they shall think it expedient. All new establishments of this description will create expense, which must be paid by this country or by Canada, as neither the Red River settlement nor the Indian country have available means for the purpose.

We beg to be allowed to add the expression of our opinion, that in whatever arrangements which may now be made for the future government of the country, any mixed authority, or combination of agents, appointed to act with those of the Company, will only weaken an administration which it is essential to strengthen in the present state of affairs.

No competent persons would be found to abandon civilized life to accept such situations with such salary as will be found reasonable; and if they could be found, the probability is, that the want of sufficient occupation will soon engage them in antagonistic discussions with one another, not conducive to the general order or cordiality of the small community whose affairs they will be sent to direct.

The Board is willing to remain in the exercise of its present functions; to concur in any arrangements proposed by Government or Parliament which will not interfere with or obstruct their power of independent management of the concerns of the Company; and to give assistance and support to any magistrates appointed by the Government, in endeavouring to maintain the present undisturbed state of the Indian territories; but they will decline to undertake a divided administration, or accept the responsibility of carrying on the government of the country, under the exceptional circumstances of the case, unless assured of the same cordial and unhesitating support from Her Majesty's Government which they have hitherto enjoyed.

I have, &c.
(Signed) JOHN SHEPHERD.
Governor.

No. 10.

No. 10.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR, Hudson's Bay House, London, February 22, 1859.

I HAVE the honour to acknowledge the receipt of the Earl of Carnarvon's letter, dated the 15th instant,* in which his Lordship, by your directions, informs me that a Despatch has been received from Governor Douglas, stating that on the 3d November last he had proclaimed the revocation of the licence of the 30th May 1838, to the Hudson's Bay Company, of exclusive trade with the Indians, so far as the same embraces the territories comprised in British Columbia.

* Page 23.

I have, &c,
(Signed) H. H. BERENS,
Governor.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

No. 11.

No. 11.

COPY of a LETTER from H. H. BERENS Esq. to the Right Honourable Sir EDWARD BULWER LYTTON Bart.

SIR, Hudson's Bay House, March 15, 1859.

I HAVE the honour to acknowledge Mr. Under Secretary Merivale's letter of the 9th instant,† and lose no time, after consulting with my colleagues, in replying to it.

† Page 23.

With respect to the chartered rights of this Company, I can only repeat that my colleagues and myself are unanimous in considering that we cannot in justice to our proprietors be consenting parties to any inquiry which shall have for its object to challenge the validity of the Charter, and we feel convinced that in any discussion that may arise before Parliament that body will be prepared to act upon the maturely considered opinion which was given by the then law officers of the Crown when the whole matter was submitted to their consideration. I refer to the opinion of Sir Richard Bethell and Sir Henry Keating in July 1857, in which they state that "the questions of the validity and construction of the Hudson's Bay Company's Charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts both of the Government and the Legislature;" and that "nothing could be more unjust or more opposed to the spirit of our law than to try this Charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years." They then go on to state, that in their opinion the Crown could not now with justice raise the question of the general validity of the Charter, but that on

every legal principle the Company's territorial ownership of the lands granted and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations,) ought to be deemed to be valid.

The Board are aware that it is competent to the Canadian Government to disregard these principles, however just and well founded; but they cannot but lament to see, by a Despatch under date December 22, 1858, and published by the Provincial Legislature that the Canadian Government should have been invited by Her Majesty's Government to adopt such a policy; a course so opposed to that which was enunciated by Mr. Labouchere in his Despatch to Sir Edmund Head of the 22d January 1858, in which he distinctly states that he did not propose to discuss the question of the validity of the claims of this Company over the whole territory known as Rupert's Land. Her Majesty's Government having come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal without departing from those principles of equity by which their conduct ought to be guided.

It is to be regretted that delay should arise on the part of the Canadian Government in determining the course which they have thus been invited to take. If such proceedings are ultimately determined upon for the purpose of contesting the validity of the Charter, we shall be prepared to maintain the rights of our proprietors.

With regard to your suggestion, that the licence should be extended for a period of two years instead of for one year, as before proposed, I beg to state that all the material objections to such a proposal which were pointed out in my former letter with respect to the proposed extension of one year apply equally to an extension for two years. I beg, however, distinctly to state that, in declining to accept a renewal of the licence for a period of two years, that refusal in no way proceeds, as you propose to assume, upon conviction in our minds that injury to the public interest may not be the consequence of the absence of proper measures for maintaining peace and order in the territories in question. On the contrary, our reason for declining to undertake the preservation of peace upon an extension of the licence for the period of two years only arises from our conviction that such an extension would not secure to the Company a continuance of the weight and influence they have hitherto enjoyed, and so enable them to prevent the threatened mischief. So short an extension would be considered as evidence of the intention of Her Majesty's Government to determine their privileges altogether at the end of that term, and would deprive them of all moral influence over the parties frequenting those territories. We consider that the proposed extension would only give much more time for excitement and agitation, and would produce a state of things among the unsettled population on the frontier which might with difficulty be controlled by any subsequent administration to be established on the removal of the authority of the Company.

In the opinion of the Board there is no alternative between maintaining the present system in its former efficiency, or providing by legislation a totally different government which should possess the means for ensuring a proper administration in the Indian territories.

Should the latter alternative be decided upon, our Board will lend their most zealous assistance towards promoting any measures which may be adopted for the purpose.

The Right Hon. Sir E. B. Lytton, Bart.
&c. &c. &c.

I have, &c.,
(Signed) H. H. BERENS,
Governor.

IV.—Letters to the Hudson's Bay Company.

No. 1.

No. 1.

COPY of a LETTER from H. MERIVALE Esq., to H. H. BERENS Esq.

Downing Street, August 4, 1858.

SIR, I AM directed by Secretary Sir Edward Bulwer Lytton to acknowledge your letter of the 27th ultimo,* requesting that in the event of my consulting the Law Advisers as to steps to be taken to try the validity of the claims of the Hudson's Bay Company in North America, copy of the letter to those gentlemen might be sent to you, for the purpose of communication to the Company.

* Page 9.

I am directed by Sir Edward Bulwer Lytton to say, that he appreciates the reasons which you give for this proposal, and the importance of concert between Her Majesty's Government and the Company, so far as this is attainable; and he has no wish to keep secret from you the nature of the questions which he proposes to put to the Law Advisers. The letter, therefore, when prepared, shall be shown you, if you wish it, before it is sent. But Sir Edward Bulwer Lytton does not think it would be expedient, or consistent with the usual proceedings of Her Majesty's Government in consulting their own Legal Advisers, that copy of the draft letter should be communicated to you for the purpose of laying it before the Company.

H. H. Berens, Esq.

I have, &c.
(Signed) H. MERIVALE.

No. 2.

No. 2.

COPY of a LETTER from the Earl of CARNARVON to H. H. BERENS Esq.

Downing Street, August 5, 1858.

SIR, EVENTS with which you are familiar, which have occurred in the territory west of the Rocky Mountains, having imposed upon the Imperial Parliament the duty of authorizing the establishment of a Government in that quarter of the Queen's Dominions, I am directed by Secretary Sir Edward Bulwer Lytton to request that you will announce to the Directors of the Hudson's Bay Company the intention of Her Majesty's Government to revoke the right of exclusive trade with the Indian, which was given to the Company in the Royal Licence of the 30th May 1838, over so much of the territory in question as is comprised within the Colony of British Columbia.

I am to add, that the revocation will be effected by an instrument which Sir Edward Bulwer Lytton will transmit to the Colony, but not to have operation until received and published there.

H. H. Berens, Esq.

I have, &c.
(Signed) CARNARVON.

No. 3.

No. 3.

COPY of a LETTER from H. MERIVALE Esq., to H. H. BERENS Esq.

Downing Street, September 3, 1858.

SIR, I AM directed by Secretary Sir E. B. Lytton to transmit, for the information of the Hudson's Bay Company, and for any observations which they may have to offer, the copy of a joint address to the Queen from the Legislative Council and Assembly of Canada on the subject of the Company's territory in that Province.

Enclosure.

H. H. Berens, Esq.

I have, &c.
(Signed) H. MERIVALE.

Encl. in No. 3.

Enclosure in No. 3.

To the Queen's most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal Subjects, the Legislative Council and Commons of Canada in Provincial Parliament assembled, humbly approach Your Majesty for the purpose of representing—

THAT the approaching termination of the Licence of Trade granted by Your Majesty's Imperial Government to the Hudson's Bay Company over the Indian territories, a portion of which, in our humble opinion, Canada has a right to claim as forming part of Her territory, renders imperative the adoption of such measures as may be necessary to give effect to the rights of the Province, and presents a favourable opportunity for obtaining a final decision on the validity of the Charter of the Company and the boundary of Canada on the north and west.

That Canada, whose rights stand affected by that Charter, to which she was not a party, and the validity of which has been questioned for more than a century and a half, has in our humble opinion a right to request from Your Majesty's Imperial Government a decision of this question, with a view of putting an end to discussions and questions of conflicting rights, prejudicial as well to Your Majesty's Imperial Government as to Canada, and which while unsettled must prevent the colonization of the country.

That the settlement of the boundary line is immediately required, and that therefore we humbly pray Your Majesty that the subject thereof may be forthwith submitted for the opinion of the Judicial Committee of Your Majesty's Privy Council, but without restriction as to any question Canada may deem it proper to present on the validity of the said Charter or for the maintenance of her rights.

That any renewal of the licence to trade over the Indian territories should, in our humble opinion, be granted only upon the conditions that such portions thereof or of the other territories claimed by the Company (even if their Charter be held valid) as may be required from time to time to be set apart by Canada or by Your Majesty's Government into settlements for colonization should as required be withdrawn from under any such licence and the jurisdiction and control of the said Company, and that Your Majesty's Government or the Governor General in Council, should be permitted to grant licences to trade in any portions of the said territories while held by or in occupation of the said Company, upon such conditions for the observance of law and the preservation of the peace, for the prohibition or restriction of the sale of ardent spirits, for the protection of Indian tribes from injury or imposition, and with such other provisions as to Your Majesty's Government or to Her Excellency in Council may seem advisable.

That in our humble opinion Canada should not be called upon to compensate the said Company for any portion of such territory from which they may withdraw or be compelled to withdraw, but that the said Company should be allowed to retain and dispose of any portion of the lands thereof on which they have built or improved.

All which we humbly pray Your Majesty to take into Your Majesty's gracious and favourable consideration.

(Signed) N. F. BÉLLEAU,

Speaker, L.C.,

Legislative Council, Toronto, 14th August 1858.

(Signed) HENRY SMITH,

Speaker, L.A.,

Legislative Assembly Hall, Toronto, 13th August 1858.

No. 4.

No. 4.

COPY of a LETTER from H. MERIVALE Esq., to H. H. BERENS Esq.

SIR,

Downing Street, September 9, 1858.

* Page 19.

Enclosure.

REFERRING to Lord Carnarvon's letter of the 5th ultimo,* I am directed by Secretary Sir E. B. Lytton to transmit to you, for the information of the Directors of the Hudson's Bay Company, a copy of the Instrument under the Royal Sign Manual which was forwarded to Governor Douglas by the mail of the 2nd instant, revoking the Royal Grant to the Hudson's Bay Company of the 30th May 1838, for the exclusive trade with the Indians, in so far as the same embraces or extends to the territories comprised within the Colony of British Columbia.

H. H. Berens, Esq.

I am, &c.

(Signed) H. MERIVALE

Enclosure in No. 4.

Encl. in No. 4.

COPY of an INSTRUMENT, under the Royal Sign Manual, revoking so much of the Crown Grant of 30th May 1838, to the HUDSON'S BAY COMPANY, for exclusive trading with the Indians, as relates to the territories comprised within the Colony of BRITISH COLUMBIA, dated 2d September 1858.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen,
Defender of the Faith, to all to whom these presents shall come, greeting:

WHEREAS by an instrument under the hand and seal of the Right Honourable Lord Glenelg, then one of Our Principal Secretaries of State, and dated the 30th day of May 1838, We did, for the reasons and considerations therein recited, grant and give our licence to the Governor and Company of Adventurers trading to Hudson's Bay, and their successors, for the exclusive privilege of trading with the Indians in all such parts of North America to the northward and to the westward of the lands and territories belonging to the United States of America as should not form part of any of Our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European Government, State, or Power, but subject, nevertheless, as therein-after mentioned; and did give, grant, and secure to the said Governor and Company, and their successors, the sole and exclusive privilege, for the full period of twenty-one years from the date of Our said grant, of trading with the Indians in all such parts of North America as aforesaid (except as therein-after mentioned): provided nevertheless, and We did thereby declare Our pleasure to be, that nothing therein contained should extend or be construed to prevent the establishment by Us, Our heirs or successors, within the territories aforesaid or any of them, of any colony or colonies, province or provinces, or the annexing any part of the aforesaid territories to any existing colony or colonies to Us, in right of Our Imperial Crown, belonging, or constituting any such form of civil government as to Us might seem meet, within any such colony or colonies, province or provinces; and We did thereby reserve to Us, Our heirs and successors, full power and authority to revoke Our said grant, or any part thereof, in so far as the same might embrace or extend to any of the territories aforesaid, which might thereafter be comprised within any colony or colonies, province or provinces as aforesaid:

And whereas We have by Our Commission under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster, this second day of September 1858, in the twenty-second year of Our reign, and in virtue as well of the powers vested in Us by an Act entitled "An Act to provide for the Government of British Columbia," as of all other powers and authorities belonging to Us in that behalf, established within the territories aforesaid a colony, under the title of "British Columbia," bounded, as in the said recited Act is mentioned, to the south by the frontier of the United States of America, to the east by the main chain of the Rocky Mountains, to the north by Simpson's River and the Finlay branch of the Peace River, and to the west by the Pacific Ocean; and including Queen Charlotte's Island, and all other islands adjacent to the said territories, except as therein-after accepted:

And whereas it has appeared to Us expedient that the right of exclusive trade with the Indians, given by Us in manner aforesaid to the Governor and Company of Adventurers trading to Hudson's Bay, and their successors, within the territories in the said instrument described, should no longer be exercised by them within so much of those territories as is comprised within the said Colony of British Columbia:

Now know ye, that We do hereby revoke Our said Grant contained in the herein-before recited instrument of the 30th May 1838, in so far as the same embraces or extends to the territories comprised within the said Colony of British Columbia:

And We do hereby declare, that this present revocation of Our said grant shall take effect within the said colony as soon as it shall have been proclaimed there by the Officer Administering the Government thereof.

No. 5.

No. 5.

COPY of a LETTER from the Earl of CARNARVON to H. H. BERENS Esq.

Downing Street, November 3, 1858.

SIR, I AM directed by Secretary Sir E. B. Lytton to acknowledge the receipt of your letter of the 12th October.*

Sir E. B. Lytton will not conceal the disappointment and regret with which he has received that communication, containing, if he understands its tenor correctly, a distinct refusal on the part of the Hudson's Bay Company to entertain any proposal with a view to adjusting the conflicting claims of Great Britain, of Canada, and of the Company, or to join with Her Majesty's Government in affording reasonable facilities for the settlement of questions in which Imperial no less than Colonial interests are involved.

It is Sir E. B. Lytton's anxious desire to come to some equitable and conciliatory arrangement by which all legitimate claims of the Hudson's Bay Company should be fairly considered, in reference to the territories or the privileges they may be required to surrender; but if the decision, as conveyed in your letter, be regarded as final, all power to

facilitate such an arrangement is withdrawn from his hands. By that decision Sir E. B. Lytton sees with regret that a process of temperate and amicable inquiry and adjudication must be exchanged for a legal conflict, where all parties concerned will be brought into antagonistic and even hostile relations, and where it is manifest that the terms of compensation, compromise, and mutual convenience, which Her Majesty's Government would, under other circumstances, have been able to negotiate, must become far more difficult of attainment, if not actually unattainable.

Unsatisfactory as this result would be, Sir E. B. Lytton will not feel at liberty to decline it. He desires that the Hudson's Bay Company should distinctly understand that in his opinion the time for arriving at some authoritative definition of conflicting claims can no longer be postponed with safety or in justice to public interests, and that both Canada and the British Parliament might justly complain of further and unnecessary delay.

But before deciding finally upon the course to be pursued, he desires to place once more the question before the Hudson's Bay Company, with a sincere hope that on a fuller consideration they may see the expediency of modifying the determination which your letter announced.

Where on all sides interests so great and various are concerned, the wisest and most dignified course will be found, as Sir E. B. Lytton has on previous occasions pointed out, in an appeal to and a decision by the Judicial Committee of the Privy Council, with the concurrence alike of Canada and of the Hudson's Bay Company.

If the adoption of such a procedure be advantageous to the interests of all parties concerned, Sir Edward cannot but think it would be particularly for the interest of the Hudson's Bay Company. It would afford a tribunal pre-eminently fitted for the dispassionate consideration of the questions at issue; it would secure a decision which would probably be rather of the nature of an arbitration than of a judgment; and it would furnish a basis of negotiation on which reciprocal concession and the claims for compensation could be most successfully discussed.

In such an event Sir E. Lytton would be prepared to agree, that the Company, if they succeed in maintaining the full rights which they claim, should be indemnified against the costs, and that in any other result it should be understood that each party should bear its own expenses incident to the proceeding.

It is not for Sir E. Lytton to dictate to the Company the course which they should pursue, but I am to place distinctly before them his own intentions, and to leave them to decide.

If, on the one hand, the Company will meet Sir E. B. Lytton in finding the solution for a recognized difficulty, and will undertake to give all reasonable facilities for trying the validity of their disputed Charter, they may be assured that they will meet with fair and liberal treatment, so far as Her Majesty's Government are concerned; but if, on the other hand, the Hudson's Bay Company persist in declining these terms, and can suggest no other practicable mode of agreement, Sir E. B. Lytton must hold himself acquitted of further responsibility to the interests of the Hudson's Bay Company, and will take the necessary steps for closing a controversy too long open, and for securing a definite decision, which is due to the material development of British North America, and the requirements of an advancing civilization. It is only fair to add, that in such case the renewal of the exclusive licence to trade in any part of the Indian territory, a renewal which could only be justified to Parliament as part of a general arrangement, adjusted on the principles of mutual concession, must become impossible.

H. H. Berens, Esq.

I have, &c.

(Signed) CARNARVON.

No. 6.

No. 6.

COPY of a LETTER from the Earl of CARNARVON to H. H. BERENS, Esq.

SIR,

Downing Street, January 28, 1859.

WITH reference to former correspondence on the pending questions between Her Majesty's Government and the Hudson's Bay Company, I am directed by Secretary Sir E. B. Lytton to request you will inform the Directors of the Hudson's Bay Company that Her Majesty's Government, after the most matured consideration, are not prepared to grant to the Company a renewal for a term of years of the licence of exclusive trade

which they now enjoy over the territories of North Western America, but which is not aimed under their Charter, and not included in British Columbia. At the same time, regard being had to the proximity of the period at which the present licence will expire, namely, in May next, and the injury to the public interest in the regions comprised in the licence which might, in the present state of things, arise from its termination at that date, Her Majesty's Government are willing to grant the Hudson's Bay Company a fresh licence for one year, to commence from the expiration of the present licence.

I have, &c.

H. H. Berens, Esq.

(Signed) CARNARVON.

No. 7.

No. 7.

COPY of a LETTER from the Earl of CARNARVON to H. H. BERENS Esq.

Downing Street, February 15, 1859.

I AM directed by Secretary Sir E. B. Lytton to inform you that a Despatch has been received at this office from Governor Douglas, reporting that on the 3rd of last November he had duly proclaimed the revocation of the licence of the 30th May 1838, of the Hudson's Bay Company, for exclusive trading with the Indians, in so far as the same embraces the territories comprised in British Columbia.

I have, &c.

H. H. Berens, Esq.

(Signed) CARNARVON.

No. 8.

No. 8.

COPY of a LETTER from H. MERIVALE Esq. C.B., to H. H. BERENS Esq.

Downing Street, March 9, 1859.

I AM directed by Secretary Sir E. B. Lytton to acknowledge your letter of the 11th February last,* conveying, on the part of the Directors of the Hudson's Bay Company, their refusal to entertain the proposal which he had caused to be submitted to them, that Her Majesty should be advised to renew their licence of exclusive trade with the Indians for a year.

* Page 13.

Your letter, however, goes also at considerable length into a general statement of the present position of the Hudson's Bay Company, and defence of its conduct; and it comes necessary that Sir E. Lytton should enter upon that wider field of discussion, so at least as may be required in order to justify the proceedings of Her Majesty's Government, before he replies to the more urgent part of your communication.

I am to state at the outset that Sir E. B. Lytton has received from the Governor of Canada a despatch, copy of which is enclosed, informing him that the local government require to consult the Legislature before deciding whether they will or will not undertake legal proceedings against the Company.

29th Jan. 1859.
Vide page 4.

Sir E. Lytton, in regretting this delay, trusts that it will not be much prolonged. It is obviously due to Canada, on a matter in which she is so much concerned, to grant a reasonable time for a definite answer from the Province; but as it is also desirable that the whole question regarding the Charter territories should be settled in the course of the present session, it is Sir Edward's intention to inform the Governor-General of Canada that if the answer does not arrive by the 1st of May Her Majesty's Government must of themselves free to act.

To return to the general subject of your letter. The late Government, as your letter cites, were willing to test before the Judicial Committee, not the existence, but the extent of the rights claimed under the Charter. To this proposal the Company assented, but Canada declined to take part in an inquiry so limited. Whatever the original advantages of such a scheme may have been, the refusal of Canada to take part in the proceedings absolutely nullified it. A decision as to the limits of the Charter, waiving the question as to its general validity, could, after that refusal, have bound no one except the two parties to the proceeding, and would have been practically useless.

That refusal was only conveyed to Sir E. B. Lytton by despatch from Canada of the 16th August last. I am to notice this, only to show that Her Majesty's Government are chargeable with no unnecessary delay, having, notwithstanding the great importance of the subject, allowed as little time as possible to elapse without taking steps in the transaction.

Her Majesty's Government had now to consider what effect they could give to the 13th Resolution of the Committee of the House of Commons, in which, after specifying the principal objects which they thought desirable, added, "How far the chartered rights claimed by the Company may prove an obstacle to their attainment they are not able, with any certainty, to say. If this difficulty is to be solved by amicable adjustment, such a course will be best promoted by the Government, after communication with the Company, as well as with the Government of Canada, rather than by detailed suggestions emanating from this Committee."

With the best attention which they could give to this recommendation, Her Majesty's Government could not but see that the fairest and most direct method to accomplish it was to test, not the limits, but the validity of the Charter itself; and they were, and remain of opinion that this was best done by the consent of the three parties concerned.

Sir E. B. Lytton is well aware of the proposals made by the Company in Captain Shepherd's letter of 18th July 1857, which are referred to (and a little extended, as regards Saskatchewan,) in yours which he is now answering. He must be permitted to say, that those proposals, though conceived with the sincerest desire to avoid litigation by no means met the exigencies of the case.

Those proposals simply were (for the present purpose) to relinquish to Government "land fit for cultivation and the establishment of agricultural settlers," land as yet unascertained, and in all probability for the present but trifling in extent. Such an offer he could hardly have considered from the beginning sufficient; but it has become from subsequent causes (using the phrase without the slightest imputation on the motives of those who made it) illusory. The occupation of British Columbia has rendered more urgent than ever a policy even before that time recommended by the course of events, namely, to connect the two sides of British North America without the obstacle interposed by a proprietary jurisdiction between them. The difficulty of maintaining the jurisdiction of the Hudson's Bay Company over that intervening region became daily more evident, and the certainty also that if any attempt were made to maintain it Her Majesty's Government would be called on to furnish the means. On the other hand, it appears to be the general opinion among lawyers that the monopoly of trade claimed by the Company (under the Charter) is invalid altogether; and that the monopoly could only be defended indirectly by pushing to extreme limits the consequences of a most invidious territorial grant, enabling the Company, as landlords, to exclude traders as trespassers. Sir E. B. Lytton cannot at all, therefore, agree with the Directors in referring the precarious position of the Company to the mere general unpopularity of monopolies. The weakness of their case arose, and still arises, from causes far more special and urgent; and it was obviously to be apprehended that Her Majesty's Government might, as protectors of the rights of her subjects generally throughout the empire, be called on to defend the claimants of assumed rights which had never been fairly submitted to investigation. It was quite impossible for them to be contented, in the interest of the public, with such offers as the Company had made, and to leave the general question unsettled; and to settle it without the assent of the Company was at least to be avoided until that assent had been formally invoked.

It was with this view that the letters addressed to you from this Department on the 3d September and 3d November last,* to which you refer, were written. And it was with the same view that Sir Edward Lytton endeavoured, during the stay of the Canadian ministers in England, last autumn, to induce them to bring Canada to a decision as to her part in the proceedings to be taken.

And Sir Edward Lytton feels it due to himself and his colleagues to disclaim most distinctly the supposition, expressed or implied, that the proposal conveyed to the Company in those letters was conceived in any spirit of hostility. On the contrary, it is his conviction now, as it was when those letters were written, that the Directors would consult the interest of their shareholders most effectively by causing it to be accepted. In this way all outstanding questions could be solved. Sir Edward Bulwer Lytton feels that if the decision of the Judicial Committee was in favour of the Company, and to the full extent claimed, then the Company would stand in a more advantageous position before the country, in claiming compensation for ascertained rights, if required to relinquish them for the public benefit, than they possibly could at present. If, on the

* Pages 19 and 21.

other hand, the decision of that Committee were unfavourable to the Company, they would at all events still possess that claim to equitable consideration to which long usage, and the investment of extensive capital on the faith of supposed rights, might fairly entitle them; and although Her Majesty's Government could not of course give any distinct pledge in this latter event, no one acquainted with the general desire of Parliament to do justice to vested interests would be likely to apprehend serious danger.

In short, as the main, and perhaps the sole practical difficulty, in coming to the most amicable arrangements with the Company, appears to lie in ascertaining, not so much the amount of compensation, as the principle and mode on which it can be assessed with the approval of Parliament, so that difficulty appeared at once to be surmounted by ascertaining, without dispute, the nature of the right upon which claims for compensation may be fairly based.

The Directors, however, judged differently from Sir Edward Bulwer Lytton on this question. Sir Edward does not question their right to decide as they thought best for the interest of their shareholders. He can only express his regret at a determination which retains the very difficulty in the way of speedy and amicable settlement which he had sought to remove. As the case now stands, should Canada resort to legal proceedings, negotiation is of course at an end until the result of such proceedings is known. Should she refuse to do so, it will then be for Sir Edward Bulwer Lytton to consider whether negotiation with the Company can be resumed, or whether, in the last resort, Her Majesty's Government must take the matter into their own hands, and proceed on their own account as they may be advised. But in any case he can with justice assure the Directors that his determination will be founded on a regard to public interests only, and without the slightest bias of hostility towards the Company.

It remains for me to convey Sir E. B. Lytton's reply to the immediately practical part of your letter, that referring to the renewal of your licence over the non-charter territories.

The Directors reject his offer of a year's licence, but they are ready (in the public interest) to accept a renewal for twenty-one years, terminable at two years' notice.

Sir E. B. Lytton is sorry he cannot meet their views by acceding to this proposal, although he can well conceive, and would indeed desire, arrangements by which the Indian territory, and all land not likely to be soon colonizable, might be left to the jurisdiction of the Company, provided, on the other hand, the lands adapted for colonization were surrendered to the Crown; yet while the latter object remains unachieved he does not believe that Parliament or the public would be inclined or ought to assent to a measure which would give Her Majesty's Government, in concert with the Company, the power of continuing the licence for twenty-one years.

But he wishes to show every reasonable respect to the argument which you draw from the distance of many of the posts in the licence territory, which, by rendering communication with them extremely slow, would make a year's extension of comparatively trifling importance for the purposes in view. The delay in obtaining the decision of Canada may also be fairly taken into consideration as opposing obstacles to arrangements with the Company by which the objection to an ultimate extension of the licence might be removed. He is ready, therefore, to make the extension of two years' duration instead of one.

In making this proposal he believes he is acting in the interest of the Company, even in a pecuniary sense alone; that, however, is a question for the Directors and shareholders, and not for himself. He only refers to it in order to show how far he is from being actuated by any motives inimical to the Company. But the really important aspect of the question (as the Directors will fully agree with him) is that which regards the maintenance of peace and order, and the welfare of the Indian race; and while he believes that the dangers represented as likely to arise if the trade of the Company ceased to be protected by licence, are much exaggerated, yet he is desirous to guard against the possibility of such dangers during the interval that must elapse necessarily (without any fault of his own) between the abrupt termination of the Company's jurisdiction in parts so remote and the establishment of any other machinery for the safety of the Indians which it might be in the power of the Government to devise. He is certain that the Directors will take a similar view of this part of the question, and he is satisfied that if they reject his present offer they will do so on full conviction, from their own superior knowledge, that no evil consequences are to be apprehended from the sudden termination of their licence. But should this be an error in judgment on their part, the responsibility for the consequences will not lie with Her Majesty's Government.

Sir E. B. Lytton trusts that as early an answer as practicable may be returned to this letter, as little time is left for communicating with the Governor of British Columbia before the termination of the licence; and it may be necessary (in the event of your refusal) to apply to Parliament for an amendment of the present Acts.

H. H. Berens, Esq.

I have, &c.
(Signed) H. MERIVALE.

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